

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOSHUA ADAM SCHULTE,

Defendant.

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17-CR-548 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

In his Omnibus Pretrial Motion, *see* ECF No. 765 (“Def.’s Omnibus Mem.”), Defendant moves to compel classified discovery related to, among other things, (1) “CIA emails and Sametime messages sent and received by Mr. Schulte, including all metadata,” *id.* at 51, and (2) his “CIA Polygraph and results,” *id.* at 52.

With respect to the emails and messages, Judge Crotty previously concluded that the Government had complied with, if not exceeded, its discovery obligations by producing all relevant emails and messages and agreeing to produce all emails and messages sent by Defendant, whether relevant or irrelevant. *See* ECF No. 124, at 9. Accordingly, what Defendant now seeks are the emails and messages he received that were deemed irrelevant and that the Government contends contain classified information. *See* ECF No. 761 (“Gov.’s Omnibus Mem.”), at 43. Defendant has not persuaded the Court that there is any basis to revisit Judge Crotty’s prior decision denying him access to the content of these communications. To that extent, therefore, Defendant’s motion is denied.

That said, in his motion, Defendant seeks not only the contents of these communications, but also metadata associated with them on the theory that they would show the “time [he] logged

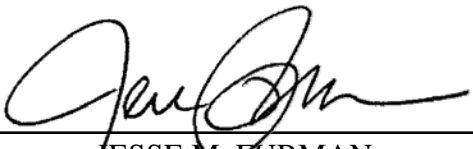
into, accessed, read, and drafted emails.” Def.’s Omnibus Mem. 51. It is unclear whether that metadata can be separated from the contents of the emails and messages and whether the metadata itself is classified; the Government addresses neither issue in its opposition. No later than **April 29, 2022**, the Government shall file a letter addressing these two questions.

With respect to the polygraph information Defendant seeks, the Government contends that the polygraph was never “adjudicated” and that the transcript of the polygraph was already produced to Defendant in classified discovery. Gov. Omnibus Opp’n 44. However, the Court understands that further classified information related to the September 2016 polygraph examination exists, may be discoverable, and does not appear to have been addressed in the prior CIPA process. Accordingly, the Court will address Defendant’s motion to compel production of that information during the sealed hearing scheduled for May 3, 2022.

Finally, the Court is in receipt of the parties’ requests to charge, filed April 22, 2022. By **May 16, 2022**, the parties shall file any proposed *voir dire* and a proposed verdict form.

SO ORDERED.

Dated: April 25, 2022
New York, New York



JESSE M. FURMAN
United States District Judge